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RUEATRS/DEPT OF TREASURY WASHDC
RUEHBUL/AMEMBASSY KABUL 9907
RUEHLO/AMEMBASSY LONDON 9777
RUEHNE/AMEMBASSY NEW DELHI 4530
RUEHLH/AMCONSUL LAHORE 6835
RUEHKP/AMCONSUL KARACHI 1152
RUEHPW/AMCONSUL PESHAWAR 5763
RUEAIIA/CIA WASHDC
RUEKJCS/JOINT STAFF WASHINGTON DC
RHEHNSC/NSC WASHINGTON DC
RUEKJCS/SECDEF WASHINGTON DC
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UNCLAS SECTION 01 OF 02 ISLAMABAD 000438

SENSITIVE

SIPDIS

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SUBJECT: PAKISTAN 2009 SPECIAL 301 REVIEW

REF: STATE 8410

¶1. (SBU) Summary: Post recommends that Pakistan remain on the Priority Watch List (PWL) at the conclusion of the 2009 Special 301 Review process. Pakistan has made no significant progress in IPR enforcement or data protection legislation in the past year. End Summary.

Data Protection

¶2. (SBU) Pakistan first committed to adopting TRIPS-consistent data protection legislation in 2006. While there was some progress on legislation in the fall of 2007, the amendment to the 1976 Drugs Act is now stalled because of disagreements between the Ministry of Health (MOH), Ministry of Law (MOL) and various industry stakeholders over the definition of "new chemical entity" and has yet to be introduced to the National Assembly. In February 2009, the MOH held a meeting with stakeholders to discuss the draft legislation again. At least one stakeholder expressed some optimism that the legislation might move forward "in the next few months," but others think that the prospect of progress is minimal. More than three years have passed since Pakistan first represented that it would pass the data protection legislation and there has been little progress.

¶3. (SBU) Pakistan's foreign pharmaceutical companies believe that imperfect data protection is better than none at all, and are reassured that they will have additional opportunities to strengthen data protection if the legislation is passed. The foreign pharmaceutical industry continues to be at odds with Pakistan domestic pharmaceuticals who oppose the data protection legislation. Since the new PPP Government took office last year, it appears that there is little willingness to pass a data protection law. We have heard from some representatives of foreign pharmaceutical firms that they have given up their lobbying efforts with the GOP.

¶4. (SBU) It is possible that foreign pharmaceuticals perhaps have not aggressively pushed the data protection legislation lately because the government pharmaceutical pricing regime has not permitted a price increase in the industry in seven years. Thus, many foreign companies cannot afford to develop and market new products in Pakistan. In the past year, two U.S. pharmaceutical companies - Merck, Sharp and Dohme and Bristol-Myers Squibb have sold their operations to local producers and left the market.

IPO still ineffective

15. (SBU) Pakistan's Intellectual Property Organization (IPO) was created with much fanfare in 2005 with ambitious goals of abolishing fragmented IPR management and becoming a proactive vehicle for efficient, integrated IPR registration. Pervaiz Kausar, the recently appointed Chairman of the IPO, has told us that the new government is not providing adequate support for the organization. Kausar said that only about one-third of the positions in his office were funded as of January 2009, and that he himself has never been paid since taking office 16 months ago. According to him, the current Director General of the IPO, whom he described as an elderly relative of President Zardari, is not an effective administrator.

16. (SBU) In spite of a lack of staff, Kausar, an experienced private sector executive, has pushed ahead and continued to provide training. We attended a trademark training class at the IPO's Intellectual Property Academy (IPA) for a group of 50 plus law students, customs officials and other government officials, the week of February 27. The training was a well-organized overview of copyright law and enforcement in Pakistan. This course was offered without a fee and presented by qualified volunteers. IPA conducted a similar course on a different IPR subject in September 2008.

IPR Enforcement

17. (SBU) The Pakistan Federal Investigation Agency (FIA) and the Federal Board of Revenue continue to investigate and prosecute IPR violations; however, pirated media, books and trademarked goods

ISLAMABAD 00000438 002 OF 002

remain prevalent in the markets and stores throughout Pakistan. After several successful factory raids in 2005, manufacturing of pirated goods in Pakistan is less obvious. Some of those who were arrested in the 2005 raids were prosecuted; however, most cases are still pending and the few guilty verdicts that were rendered imposed minimal punishments. The FIA is encouraging the Ministry of Interior to work with the Law Ministry to strengthen the punishments for IPR violations.

18. (SBU) The continued prevalence of pirated goods in the markets, most of reportedly Chinese origin, is indicative of lackadaisical enforcement. Some newsworthy FIA raids have taken place in Rawalpindi and Lahore, however, and one pharmaceutical company commented that the FIA in the Punjab has begun to crack down on counterfeit drugs there. But the total number of IPR cases registered with the FIA last year remained low, at approximately 46. (Comment: Twenty eight of these cases are characterized as "spurious drug" cases that include both counterfeit drugs and drugs that are manufactured by the patent holder but are substandard; thus, these may or may not be IPR violations. End comment.)

19. (SBU) The FIA IPR Director suggested that the agency's resources have been diverted elsewhere because of the economic and political situation and lack of focus on IPR within the new government.

Comment

110. (SBU) Comment: Given the lack of progress on data protection and an apparent lack of adequate IPR enforcement, we recommend that Pakistan remain on the priority watch list. We continue to actively pursue opportunities for training and public awareness, but the democratically elected government's attention has been focused on the major macroeconomic reforms required by the IMF and its own political survival. We need to continue to work with the GOP to highlight the importance of a robust IPR regime, however, and recommend negotiating an action plan in the IPR arena over the coming year to improve IPR enforcement.

FEIERSTEIN